

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE
CRIMINAL WRIT PETITION NO. 2052 OF 2007
Walmik Uddhav Parhad ..Petitioner
Vs.
The State of Maharashtra and anr. ..Respondent
Mr. V.A. Shastry for petitioner.
Mr. P.A. Pol, APP for State.
CORAM: B.H. MARLAPALLE, J.
Date : November 02, 2007.

P.C.:

1. Heard Mr. Shastry the learned for the
petitioner who is an accused in S.T.C. No.1633 of
2004 filed under Section 138 of the Negotiable
Instruments Act, 1881 before the learned JMFC at Pune.

2. It appears that after the evidence of the
complainant and one more witness was recorded, the
accused had stepped in the witness box for his
cross-examination on the affidavit filed by him by way
of examination-in-chief and his cross-examination was
also recorded. Thereafter the complainant moved an

application at Exh.66 purportedly under Section 311 of Cr.P.C. and prayed for recalling the accused for his cross-examination. The reason for this and as was stated in the application was that a copy of the affidavit by examination-in-chief served on the complainant's Advocate was incomplete as compared to the affidavit placed on record before the court and this was noticed by the learned Advocate for the complainant belatedly while going through the record of the case. The accused filed his say and opposed the same. The learned JMFC by the impugned order dated 17/7/2007 was pleased to allow the application. The said order, allowing application at Exh.66, was challenged before the Sessions Court at Pune by filing Criminal Revision Application No.698 of 2007 and the same was dismissed by the learned Additional Sessions Judge, Pune. Hence this petition.

3. Mr. Shastry submits that the order impugned is grossly erroneous and it has resulted in miscarriage of justice in as much as once the accused has disclosed his defence, the application at Exh.66 was nothing short but an attempt to fill in the gaps in the cross-examination. In support of these

contentions, he placed reliance on the following three judgments of this court:-

(a) Shridhar Waman Surushe vs. State of Maharashtra and anr. [1987(1) Bom.C.R. 533].

(b) State of Maharashtra vs. Anand Namdeo Patil and ors. [2000 (5) Bom. C.R. 503].

(c) Vijaya Trimbakrao Shirole vs. State of Maharashtra and ors. [2006 (1) Bom.C.R. (Cri) 866].

4. In the instant case the learned JMFC verified the record and thereafter recorded the following findings in the impugned order:-

"I found one paragraph on page 3 is missing in the copy supplied to the complainant. Therefore, I find substance in the argument made by the counsel for complainant. I found the substance in the submission made by him that as there was no reference of documents in the affidavit copy supplied to him he has not

cross-examine the witness in respect of
documents filed by him on record.

The last para in the affidavit on record
Exh.46 is missing in the copy of the affidavit
supplied to the complainant. Therefore,
certainly the counsel for complainant was
under impression that the copy which is filed
on record is the same copy which is with him.
Further more considering above facts, I find
that for just decision of the case it is
necessary to recall the witness only
restricted to the last para in the affidavit
Exh.46 which is missing in the copy of the
counsel for complainant and the relevant
papers."

. I am, therefore, satisfied that both the
courts below JMFC do not commit an error apparent on
the face of the record and the order passed by the
learned JMFC is only relating to the last para of the
affidavit filed by the complainant and which para was
missing in a copy of the same supplied to the

complainant's Advocate. The scope of cross-examination is very much restricted and the apprehension expressed that it may cause prejudice to the defence already disclosed cannot be accepted.

5. Petition is rejected summarily.

(B.H. Marlapalle,J.)